

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

WENDELL R. AYERS,)	
)	
Plaintiff,)	
vs.)	NO. CIV-13-0884-HE
)	
OKLAHOMA DEPARTMENT OF)	
CORRECTIONS, <i>et al.</i> ,)	
)	
Defendants.)	


ORDER

Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, filed this § 1983 action against various state employees alleging violation of his Eighth and Fourteenth Amendment rights. Consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred to Magistrate Judge Gary M. Purcell, who recommends that the motion to dismiss without prejudice filed by plaintiff be granted.

Defendants, having failed to object to the Report and Recommendation, waived their right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). *See* 28 U.S.C. § 636(b)(1)(C). Accordingly, the court adopts Magistrate Judge Gary M. Purcell's Report and Recommendation, **GRANTS** plaintiff's motion [Doc. #38] and **DISMISSES** this action **WITHOUT PREJUDICE**. *See* Fed.R.Civ.P. 41(a)(2). Defendants' motion for summary judgment [Doc. #34] is **DENIED** as **MOOT**.

IT IS SO ORDERED.

Dated this 6th day of March, 2014.



JOE HEATON
UNITED STATES DISTRICT JUDGE